



# SEABOARD COAST LINE RAILROAD COMPANY

Office of Superintendent

3610 Bush Street

Raleigh, North Carolina 27609

E. S. WILKES  
SUPERINTENDENT

October 16, 1978

1.Lumberton.3-2 h

Mr. H. E. Stacy, Jr.  
McLean, Stacy, Henry & McLean  
Attorneys and Counsellors at Law  
Southern National Bank Building  
Lumberton, North Carolina 28358

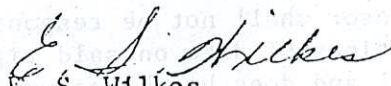
Re: Jacob Swamp Water Shed  
Lumberton, N. C.

Dear Mr. Stacy:

Enclosed for the records of Robeson County Drainage District No. 1 is fully executed copy of tri-party agreement dated June 14, 1978, between Seaboard Coast Line Railroad Company, Robeson County Drainage District No. 1 and the City of Lumberton, N. C., covering construction and maintenance of a 10-ft. wide earthen dike on our right of way in the median strip under the twin overpasses of I-95 spanning SR-1541 and our main track, at a point 760 feet east of Mile Post S-296, at Lumberton, N. C. to protect the City of Lumberton from flooding Lumber River.

As previously advised, the agreement does not recite any monetary consideration for preparation of agreement or use of right of way; however, it does provide that should flooding be contemplated, any expenses incurred incident to closing and opening said dike across the track and roadbed will be borne by the licensees, including any costs which may be incurred by Railroad forces in connection therewith.

Very truly yours,

  
E. S. Wilkes  
Superintendent

✓  
cc: Mr. W. C. Baxley, Director  
Department of Public Works  
City of Lumberton  
P. O. Box 1338  
Lumberton, North Carolina 28358

Copy of agreement is attached for records of the City.

THIS AGREEMENT, Made this 14th day of June, 1978, by and between the SEABOARD COAST LINE RAILROAD COMPANY, a Virginia corporation, hereinafter referred to as Licensor, ROBESON COUNTY DRAINAGE DISTRICT NO. 1, a body corporate and politic under the laws of the State of North Carolina, and the CITY OF LUMBERTON, a municipal corporation under the laws of the State of North Carolina, hereinafter, together, referred to as Licensees,

WITNESSETH: That Licensor, for and in consideration of the sum of One Dollar to it in hand paid by Licensees, the receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter made and contained on the part of Licensees to be kept and performed, hereby grants unto Licensees the right or license to construct and maintain portions of a 6-foot, more or less, high (10-foot wide top with 3:1 side slopes) earthen dike on the easterly and westerly portions of Licensor's right of way at or near Lumberton, North Carolina, at a point 760 feet southeastwardly measured along the center line of Licensor's main track from Milepost SE-295; the easterly end and westerly end of said dike, adjacent to said main track, being at a minimum clearance distance of 15 feet from the center line of said main track; as particularly shown outlined in red on print of Licensee's drawing dated April, 1978, Sheet 2 of 3, attached hereto and made a part hereof; the profile of the portions of said dike being shown also on said attached print as well as print of Licensees' drawing dated April, 1978, Sheet 3 of 3, also attached hereto and made a part hereof.

And Licensees hereby covenant and agree in consideration thereof:

1. Said District shall, at Districts' expense, place and maintain sand-cement bags on the slopes of said dike, adjacent to said main track, to prevent erosion, as indicated on said attached prints.
2. Said District shall construct and maintain the portions of said dike on said right of way at Districts' entire cost and expense and in a manner in all respects satisfactory to the Division Engineer of Licensor. In the event said portions of dike shall require repair or renewal, said City shall make such repair or renewal at City's expense; and upon the failure of said City so to do, the said Division Engineer shall give written notice to said City and upon the failure of said City to make such repair or renewal within 30 days after such notice, Licensor may make all necessary repair or renewal at the cost of said City, which cost said City hereby agrees to pay on demand.
3. Said City will, at its expense, at any time, upon 30 days' written notice given by Licensor, change and alter the location of said dike to conform to any changes or improvements that may be made by Licensor in its tracks or roadway at said location, or to permit the utilization of Licensor's right of way for the construction of tracks, buildings or other structures.
4. Licensor shall not be responsible in any manner for loss of or damage to said portions of dike on said right of way from any cause whatsoever; and Licensees shall and does hereby assume, and agrees to indemnify and hold harmless Licensor, its successors and assigns, from and against all loss, costs, expenses, including attorneys' fees, claims, suits and judgments whatsoever in connection with injury to or death of any person or persons or loss of or damage to property caused by or in any way connected with the construction, maintenance, failure, or presence of said dike on said premises, excepting, however, any loss or damage caused by the negligence of Licensor, its agents, servants or employees.

5. Said District will pay to Licensor, on bills rendered by Licensor, the full amount of all costs and expenses which may be incurred by Licensor in protecting its track or tracks and maintaining traffic thereover during the construction of said dike or during any repair, renewal, relocation or removal of said dike.

6. Licensees will be obligated to assume the responsibility for any damage to Licensor's right of way which might occur as a result of the failure of said dike.

7. Said District shall install and maintain, above ground and in a manner and at such locations as may be designated by said Division Engineer, markers to plainly indicate the location and ownership of said dike.

8(a). Said City shall also have the right and privilege of closing said dike across said track and the roadbed thereof ONLY in the event the City of Lumberton is in eminent danger of flood and the closing of said dike across Licensor's property shall be subject to Licensor's Chief Dispatcher being given at least 12 hours notice prior to such closing.

(b). Said City hereby agrees that when the flooding has receded said City will open said dike across said track and roadbed thereof and that any expenses incident thereto shall be borne by said City, including, but not limited to any cost which may be incurred by Licensor in connection therewith.

9. In consideration for the right or license hereby granted, Licensees hereby agree that said Licensor shall not at any time or in any manner be assessed with the cost or any part of the cost of the construction, maintenance, use or presence of said dike on Licensor's property.

10. It is expressly understood and agreed that this agreement shall remain in full force and effect so long as the covenant and agreement set forth herein are kept and performed by the Licensees, and if the Licensees fail to keep and perform any of such covenants, terms or conditions, then the Licensor reserves the right to terminate this agreement upon thirty (30) days' notice to the Licensees. On termination of this agreement, Licensees will, at their expense, vacate the use of said right of way for the purposes herein set forth and restore, under supervision of Licensor, the land to its original condition, if required by the Licensor.

It is understood and agreed that this agreement shall not be binding until it has been authorized or ratified by a proper ordinance or resolution of the City Council of the City of Lumberton, North Carolina, a certified copy of which ordinance or resolution is attached hereto and made a part of this agreement.

IN WITNESS WHEREOF the parties hereto have executed this agreement in duplicate the day and year first above written.

Witnesses for Licensor:

SEABOARD COAST LINE RAILROAD COMPANY

L. S. Smith  
John J. Ward

By [Signature] (I.S.)  
Assistant Vice President

Witnesses for Licensees:

CITY OF LUMBERTON, NORTH CAROLINA

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By *W. H. E. Bullard* (L.S.)  
Mayor

\_\_\_\_\_

Attest *Steve Bigger* (SEAL)  
Clerk

*W. E. H. H. L.*

ROBESON COUNTY DRAINAGE DISTRICT NO. 1

By *Coat. H. H. H.* (L.S.)  
Chairman

Attest *J. H. H. H.* (SEAL)  
Secretary

Extracts from minutes of meeting of the City Council of the City of Lumberton, North Carolina held on the 18 day of September, 1978.

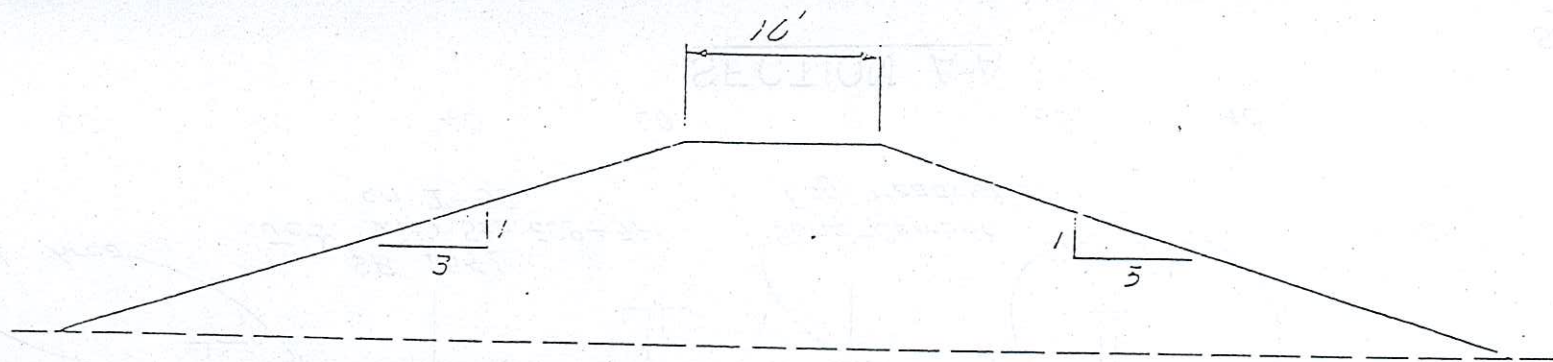
### RESOLUTION

Be it resolved by the City Council of the City of Lumberton, North Carolina Mayor of said City In regular meeting assembled that the be, and he hereby is, authorized to enter into an agreement with the SEABOARD COAST LINE RAILROAD COMPANY, ~~and Robeson County Drainage District No. 1, and to sign same on behalf of said City whereby said Railroad Company grants unto said Drainage District and said City the right or license to construct and maintain portions of an earthen dike on the right of way of Licensor at or near Lumberton, North Carolina, as particularly described in said agreement, which agreement is dated June 14, 1978, a copy of which agreement is filed with this City Council.~~

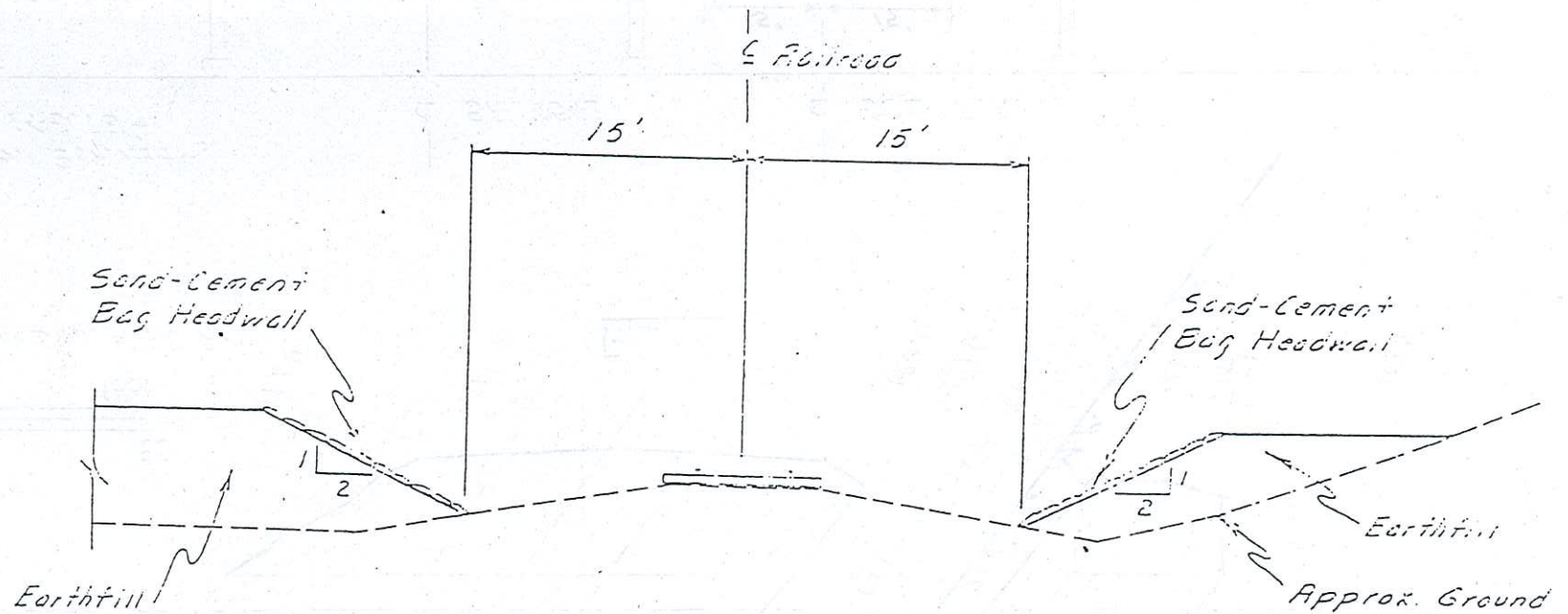
I certify the above to be a true and correct copy.

*Deirdre J. J.*  
Clerk





TYPICAL SECTION OF EARTHFILL



SECTION OF RAILROAD